Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
And	)	
	)	
ADAMS COMMUNICATIONS	)	File No. BPCT-940630KG
CORPORATION	)	
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 51, Reading, Pennsylvania	)	

APPEARANCES

Thomas J. Hutton, Eric Fishman, and C. Dennis Southard, IV on behalf of Reading Broadcasting, Inc.; Gene A. Bechtel and Harry F. Cole on behalf of Adams Communications Corporation; Erwin G. Krasnow, Eric T. Werner, and Michael M. Pratt on behalf of Micheal L. Parker; and Charles W. Kelley and James W. Shook on behalf of the Chief, Enforcement Bureau.

DECISION

Adopted: July 3, 2002 **Released:** July 11, 2002

By the Commission:

I. PRELIMINARY STATEMENT

1. In this decision, we reverse the Initial Decision of Administrative Law Judge Richard L. Sippel, which denied the renewal application of Reading Broadcasting, Inc. (RBI) and granted the competing application of Adams Communications Corporation (Adams) for a construction permit. We find that RBI is the comparatively superior applicant here, despite a minimal past record in operating the station. In so doing, we dispose of the last remaining "comparative renewal" proceeding, in which an incumbent licensee faces a comparative challenge from a construction permit applicant for the same facilities. Congress, by Act of February 8, 1996, Pub. Law 104-104, 110 Stat. 56, codified as 47 C.F.R. § 309(k)(4), prohibited the comparative consideration of renewal applicants filed after May 1, 1995. In Implementation of Section 309(j) of the Communications Act, 13 FCC Rcd 15920, 16005-06 ¶¶ 212-14 (1998), discussed further at paragraph 73, below, the Commission determined that, auctions not being a legally available option, it would apply the factors set forth in Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393 (1965), consistent with existing case law, to resolve the few remaining comparative renewal cases including this one.

I. BACKGROUND

2. RBI seeks renewal of its license to operate station WTVE(TV), Channel 51, Reading, Pennsylvania. In addition to the standard comparative issue, issues were designated as to the basic qualifications of RBI and Adams to be licensees. The first issue seeks to determine whether RBI's principal Micheal L. Parker (Parker) made misrepresentations or lacked candor before the Commission in reporting his previously adjudicated misconduct. The second issue concerns allegations that Adams abused the Commission's processes by filing its application for an improper purpose.

3. Administrative Judge Richard L. Sippel (ALJ) granted Adam's competing application and denied RBI's renewal application. Reading Broadcasting, Inc., FCC 01D-01 (ALJ Apr. 5, 2001) (ID). The ALJ resolved both basic qualifications issues favorably to the respective applicants. The ALJ concluded that Adams had not filed its application for the improper purpose of obtaining a settlement and that Adams' principals had not lacked candor in their testimony on the subject. ID at ¶ 247. Turning to RBI, the ALJ held that Parker, who is RBI's president, a director, and a shareholder, had given false and misleading information in a series of applications, concerning his prior involvement in misconduct. ID at ¶ 235. Although the ALJ concluded that Parker was unqualified to be a Commission licensee, the ALJ further held that RBI was not disqualified provided that it severed its relationship with Parker. Id.

4. Having found both applicants basically qualified, the ALJ resolved the comparative issue favorably to Adams. He ruled that RBI was not entitled to a renewal expectancy because WTVE(TV)'s programming had been deficient during the relevant 1989-94 license term and because Parker had violated the Commission's rules by transferring control of the station without authorization and by violating the Commission's reporting requirements. ID at ¶ 246. The ALJ awarded Adams a slight comparative preference for diversification because Parker had interests in existing broadcast stations. ID at ¶ 249. He also gave Adams a slight preference for comparative coverage. ID at ¶ 250. In the ALJ's view, these advantages outweighed RBI's slight preferences for local residence and civic activities. ID at ¶¶ 251-52.

5. Now before the Commission are exceptions to the initial decision filed by RBI, and related pleadings.[1] For the reasons set forth below, we will reverse the initial decision. We find that neither Adams nor RBI's Parker committed disqualifying misconduct, that RBI is not entitled to a renewal expectancy based on its past operation of WTVE(TV), but that RBI is comparatively superior to Adams.

II. ADAMS' ABUSE OF PROCESS ISSUE

6. Initial Decision. In considering Adams' basic qualifications, the ALJ credited Adams' claim that it did not abuse the Commission's processes[2] by filing its application for the purpose of reaching a settlement, as opposed to having a bona fide intention to own and operate a broadcast station.[3] In reaching his decision, the ALJ considered evidence submitted by RBI that most of Adams' principals had previously been principals of Monroe Communications Corporation (Monroe), which had filed a comparative challenge against a television station in Chicago. ID at ¶ 154. Although the Commission granted Monroe's application after lengthy proceedings, Monroe's principals did not operate the station, but instead agreed to a settlement in which they dismissed their application in return for a buy-out of approximately $17.5 million. However, the ALJ noted that the Commission, in approving the Chicago settlement, found that Monroe had not filed for the purpose of reaching a settlement. Id. The ALJ also credited testimony that Monroe's principals would have operated the station except that they believed that they would not be able to produce Spanish language programming equal to the station's existing programming. ID at ¶ 239.

7. The ALJ also considered testimony as to Adams' motives for filing the Reading application. He found that Adams' principals believed that home shopping stations such as WTVE(TV) generally did not serve the public interest because such stations did not originate local programming, and that these stations were vulnerable to a comparative renewal challenge. ID at ¶¶ 157-58. The Adams principals formulated a strategy under which they would challenge a home shopping station regardless of where it was located. ID at ¶ 158. After encountering difficulties acquiring a transmitter site needed to mount a challenge in Marlborough, Massachusetts, Adams' principals pursued the Reading market as the next available opportunity.

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[1] Before the Commission are: (1) Reading Broadcasting, Inc.'s Exceptions to Initial Decision of Administrative Law Judge Richard Sippel, filed May 21, 2001, and reply, filed May 31, 2001, by Adams; (2) Brief in Support of Initial Decision and Contingent Exceptions of Adams Communications Corporation, filed May 21, 2001, and a reply filed May 31, 2001, by RBI; and (3) a consolidated reply, filed May 31, 2001, by the Enforcement Bureau. By Order, FCC 01-251 (Sept. 13, 2001), we accepted the Consolidated Exceptions and Brief of Micheal L. Parker to the Initial Decision of Administrative Law Judge Richard L. Sippel, filed May 21, 2001, as an amicus brief; RBI and Adams filed replies on September 24, 2001.

[2] The term "abuse of process" can generally be defined as the use of a Commission process, procedure, or rule to achieve a result which that process, procedure, or rule was not designed or intended to achieve, or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying purpose of that process, procedure, or rule. See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 4 FCC Rcd 4780, 4793 n. 3 (1989).

[3] At the time RBI raised allegations of abuse of process against Adams, Adams filed a letter with the Office of General Counsel asking that office to take appropriate action. Letter from Gene A. Bechtel and Harry Cole to Christopher Wright, General Counsel (Nov. 24, 1999). In light of our action herein, we will dismiss the letter as moot.

Id. at ¶¶ 158-59. The ALJ credited testimony that, in pursuing this strategy, Adams' principals had acted out of a primary motive to acquire a station at low cost. ID at ¶¶ 156-57, 159.

8. In reaching this conclusion, the ALJ discounted the significance of circumstances that could arguably be interpreted as suggesting a lack of serious interest in operating a broadcast station in Reading. For example, the ALJ found that Adams had no connection with the Reading area and "it cannot be accepted that they picked RBI from a list of renewals out of concern at the time of target selection for the interests of the local viewers of Channel 51." ID at ¶ 157. Additionally, he found that Adams' investigation of Reading reflected "uncontrolled, haphazard methodology." Id. at ¶ 160. He noted in particular, an incident, the significance of which the parties hotly disputed. In May 1994, Adams principal Howard N. Gilbert hired a man named Paul Sherwood to tape WTVE(TV)'s programming, so that Gilbert could review the station's public service offerings. ID at ¶¶ 161-66. Sherwood, however, mistakenly taped not WTVE(TV), but the "Home Shopping Club" cable channel. Although Gilbert reviewed the tapes, he did not discover that he was not watching WTVE(TV) until after this proceeding commenced in 1999. The ALJ did not consider these lapses to be a demonstration that Adams lacked a serious intent to construct and operate the station.

9. The ALJ also found no indication that Gilbert's eventual participation in settlement talks with the Spanish language network, Telemundo, whose programming was by this time being carried by WTVE(TV), demonstrated that Adams had filed its application with an intent to settle. ID at ¶¶ 170-73. According to the ALJ, Adams' attorney told Telemundo attorney, Anne Swanson, that, while Adams planned to pursue its application, it "would not say 'no' to a settlement." ID at ¶ 170. Swanson asked Gilbert for a settlement figure, but Gilbert would not give one because Adams had not valued the station. Gilbert agreed that Adams would pay one-third of the cost of an appraisal and indicated that he would be "reasonable" about a settlement. ID at ¶¶ 171-72. RBI, however, did not participate in the settlement talks and the settlement did not materialize. The ALJ found that "Gilbert was prepared to negotiate a serious settlement in 1999," but that he was not the initiator of the discussions. ID at ¶ 172, 243. Similarly, the ALJ did not find it dispositive of an intent to settle that the fee agreement between Adams and its attorneys (who were also Monroe's attorneys) provided that the attorneys would receive twice their usual hourly rate if Adams application were granted or if the application were dismissed on "economically favorable" terms, including a settlement for reasonable and prudent expenses. ID at ¶ 174.

10. Viewing the totality of the circumstances, the ALJ ultimately concluded that Adams did not file its application for the purpose of reaching a settlement, which would have been an abuse of process. See Garden State Broadcasting Limited Partnership v. FCC, 996 F.2d 386 (D.C. Cir. 1993). For the reasons noted in paragraph 6, supra, he did not believe that the participation of Adams' principals in the earlier Monroe application reflected adversely on their motives for filing in Reading. ID at ¶ 239. He concluded that, in view of the Commission policy limiting settlements to expenses, and then only after a hearing, it would not have been realistic for Adams' principals to file for the purpose of achieving a settlement, and it was credible that they intended to seek a construction permit. ID at ¶ 240. Additionally, the ALJ observed that Adams had shown concern for programming and had taken serious steps to litigate its application. ID at ¶¶ 241-42. Finally, the ALJ believed that WTVE(TV), which was only recently emerging from bankruptcy, was not a logical target for an applicant seeking a cash settlement. ID at ¶ 244.

11. Exceptions. In its exceptions, RBI contends that the ALJ's conclusion that Adams filed its application for the purpose of owning and operating a station cannot be reconciled with Gilbert's original testimony that Adams' had a different motive for filing – namely, to set a precedent that the home shopping format was generally contrary to the public interest. RBI sees Adams' application as a continuation of the pattern of conduct manifested by the Chicago settlement in which they file an application to make a point and then settle even if they are granted the facility. RBI accuses Adams' principals of lacking candor in describing and producing documents regarding their settlement talks with Telemundo and their effort to ascertain Reading's programming needs. According to RBI, a motive to settle would be disqualifying, even if it were not the primary motive for filing. RBI also contends that the Adams fee agreement with counsel betrays an intention to settle because, for purposes of compensating counsel, it treats settlement as equivalent to grant of the application.

12. Adams responds that the ALJ carefully analyzed the testimony of Adams' witnesses and specifically found that testimony credible. See ID at ¶ 245. The Enforcement Bureau agrees with the ALJ that no abuse of process occurred, although it found the testimony of Adams' witnesses troubling in some respects.

13. Discussion. This issue presents a close question as to whether Adams' primary motive was to operate the station or to obtain a settlement. As an initial matter, we disagree with RBI's suggestion that Adams' application would be abusive even if an intention to settle was only a secondary motive. Our cases make clear that, to constitute abuse, an improper motive, such as a motive to settle, must be the primary and substantial purpose of the filing. See Radio Carrollton, 69 FCC 2d 1139, 1150-51 ¶¶ 24-26 (1978), recon. denied, 72 FCC 2d 264 (1979).[4] See also Faulkner Radio, Inc. v. FCC, 557 F.2d 866, 875 (D.C. Cir. 1977). Thus, Adams' application would represent an abuse of process only if it was filed for the primary purpose of obtaining a settlement. See also 47 C.F.R. § 73.3525(b)(2).

14. We find that the record raises a substantial question as to whether Adams' primary interest was in owning and operating a station or whether the application was filed for other purposes with the ultimate expectation of settlement. Testimony by Adams' principal, Gilbert, suggests that the group's primary motivation was to influence Commission policy regarding home shopping stations generally, rather than obtaining ownership of a broadcast station. He acknowledged that the group's interest was in public service broadcasting nationwide, as opposed to Reading in particular, and termed the group "crusaders" in this regard. Tr.1131-32. He said that he knew of no station with a home shopping format that served the public interest, that there was nothing unique about Reading, and that Reading was chosen simply because it was the next available station up for renewal.[5] Tr. 1119, 1122-24. He testified: "[T]he problem is how to get FCC to make a statement and do something so you would change the nature of broadcasting." Tr. 1118. He further testified that: "If we win this case, and you have to have a reasonable amount of public service broadcasting, Home Shopping Network isn't going to work." Tr. 1120. He explained that the group did not offer to buy a home shopping station

[4] Millar v. FCC, 707 F.2d 1530 (D.C. Cir. 1530), cited by RBI, affirmed Commission policy that was subsequently clarified by Radio Carollton.

[5] At one point, Gilbert testified: "This isn't a great place to be, Reading." Tr. 1119.

because: "That wouldn't have achieved the result we were trying to achieve." Tr. 1115. He then drew an analogy to the Chicago proceeding, in which Monroe settled: "We'd been successful in Monroe, in first knocking off pay TV. Equally or more important, as it came, we stopped pornography in the United States." Id.

15. Gilbert's testimony further suggests that Adams' principals gave little attention to the things that reasonable business people typically do in preparing to acquire a station. According to Gilbert, the group had no written analysis of the demographics of the Reading market and was not interested in researching the revenue of WTVE(TV). Tr. 1065-66. They did not research the potential value of the construction permit they were applying for. Tr. 1066. See also Tr. 2530 (indicating that Adams also did not research the Marlborough, Massachusetts station). Even the ALJ found that the "evidence of [Adams] investigating the needs of the community is accorded little weight." ID at ¶ 160. Additionally, the fee arrangement between Adams and its attorneys suggests that Adams viewed settlement as no less favorable an outcome than grant of a construction permit. The agreement provides that the attorneys would receive approximately one-half their usual fee for litigating the case, but that they would receive twice their usual fee if: "(a) the Adams application is ultimately granted, or (b) the Adams proceeding is resolved through a settlement which is economically favorable for Adams (including, for example, a resolution which entitles Adams to reimbursement for its reasonable and prudent expenses . . . . " RBI Exh. 21. By contrast, the earlier Monroe fee agreement (involving the same attorneys) provided that the attorneys would receive twice their usual rate if the Monroe application were granted, but only their usual rate if the application were dismissed pursuant to a settlement agreement. RBI Exh. 20.

16. Weighing against these circumstances, is the fact that the ALJ specifically found credible the testimony of Adams' principals that they intended to operate the station. He held that:

> There has been a careful analysis of the testimony of Adams principals regarding motive for filing, the Telemundo settlement and programming discussions, the taping episode, and the temporary lapse of Adams' corporate status. The testimony of Adams principals, while not crisp, clear and concise in all respects, has not misrepresented any material facts, has not misstated any facts of decisional significance, has not distorted the record, has not been misleading, and has not been lacking in candor.

ID at ¶ 245. This testimony indicates that Adams filed its challenge as a way to obtain a station. Tr. 2429-30, 2467-68. It also indicates that Adams intended to operate the station as a Spanish language station. Tr. 1126-27, 2444-45; RBI Exh. 45 at 9-11. We believe that the ALJ's determination of the credibility of Adams' witnesses is entitled to deference. See, e.g., TeleSTAR, Inc., 2 FCC Rcd 5, 13 ¶ 23 (Rev. Bd. 1987), citing, Penasquitos Village, Inc. v. NLRB, 565 F.2d 1074, 1078-80 (9th Cir. 1977). While the ALJ did not make specific demeanor findings in his initial decision, the record indicates that he actively participated in questioning witnesses concerning this issue. See, e.g., Tr. 2452-58. Given the close attention that the ALJ manifestly paid to the live testimony, it would be unreasonable to suppose that he could have reached the conclusion he did in the preceding quotation unless his observation of the witnesses satisfied him that they were credible. This factor distinguishes the present case from Garden State Broadcasting Limited Partnership v. FCC, 996 F.2d 386, 391-92 (D.C. Cir. 1993), in which an applicant's claimed motivation for filing was shown to be a fabrication.

17. We have examined the other various factual issues that RBI argues demonstrate that Adams had no interest in operating the station and that it intended to settle. We find that this evidence is ambiguous at best and thus does not provide a basis to reject the ALJ's conclusion that the testimony of Adams' principals establishes that they intended to operate the station. Adams' willingness to engage in settlement discussions with Telemundo does not demonstrate that settlement was Adams' primary motive. While the testimony concerning the Telemundo settlement discussions indicates that Gilbert seriously explored the possibility of settlement, Telemundo's attorney recalled that Gilbert planned to pursue his application. Tr. 2221. She also recalled that Gilbert expressed an interest in becoming a Telemundo affiliate in the event the Adams application was granted. Tr. 2262, 2278, 2281-82. Similarly, Adams' carelessness in attempting to tape WTVE(TV)'s programming does not by itself establish that Adams had no real interest in investigating WTVE(TV)'s allegedly poor performance as preparation for operating the station. Under these circumstances, we do not see a firm basis to reject the ALJ's findings on this issue, and we therefore affirm the ALJ's conclusion that Adams did not abuse the Commission's processes in filing its application. Similarly, we find no basis to conclude Adams' witnesses committed misrepresentations in their testimony. As noted, the ALJ closely observed these witnesses and found no significant misconduct in the asserted discrepancies advanced by RBI. Our own review of the record provides no substantial basis to disagree with the ALJ's conclusions in this regard.

III. RBI MISREPRESENTATION/ LACK OF CANDOR ISSUE

18. Initial Decision. The ALJ found that RBI's president, director, and shareholder, Micheal L. Parker made misrepresentations and lacked candor before the Commission. He found that Parker made false and misleading statements concerning misconduct in which Parker was involved that was found in two prior Commission proceedings discussed below. ID at ¶¶ 223-32.

19. *San Bernardino Proceeding*. In the San Bernardino comparative proceeding, the presiding Administrative Law Judge found that Parker was an undisclosed real-party-in-interest in an application filed by San Bernardino Broadcasting Limited Partnership (SBBLP). Religious Broadcasting Network, 2 FCC Rcd 6561, 6567 ¶ 60 (ALJ 1987). The Presiding Judge disqualified SBBLP and, alternatively, held that SBBLP was not entitled to comparative integration credit. The Review Board did not reach the issue of SBBLP's basic qualifications, but affirmed the denial of integration credit. Religious Broadcasting Network, 3 FCC Rcd 4085 (Rev. Bd. 1988). The Board held:

> We affirm, con brio, the ALJ's refusal to award "integration" credit to [SBBLP]**;** its application was and remains a travesty and a hoax**.** We need not repeat, point-by-point, all of the findings of fact which the ALJ has set out to support his conclusion that the progenitor and the real-party-in-interest of [SBBLP] is definitely not Van Osdel, she being merely a fig leaf for the true kingpin of [SBBLP], one Michael Parker, who currently holds an interest in numerous other broadcast permits (I.D., para. 61), and who could not in his own identity have hoped to prevail in this very close comparative contest.
>
> * * * *

> [W]e find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure purported by [SBBLP], but a convenient vizard. She can claim no serious or material role in SBB's most elementary affairs. [SBBLP] is a transpicuous sham, compare Pacific Television, supra, and the ALJ justly rejected its attempted fraud.

3 FCC Rcd at 4090 ¶¶ 16, 18. See ID at ¶¶ 119-20. Subsequently, the Review Board approved a settlement, under which SBBLP withdrew its application in return for a payment of $850,000. Religious Broadcasting Network, 5 FCC Rcd 6362 (Rev. Bd. 1990); ID at ¶ 121.

20. *Mt. Baker Proceeding*. In a second proceeding, Mt. Baker Broadcasting Company, Inc., an entity controlled by Parker, sought reinstatement of a construction permit for a new station at Anacortes, Washington that had been cancelled for failure to construct in a timely fashion. Mt. Baker Broadcasting Co., Inc., 3 FCC Rcd 4777 (1988). Notwithstanding Mt. Baker's asserted good faith efforts to complete construction on a timely basis, the Commission denied reinstatement, finding that the facilities that Mt. Baker eventually constructed were at variance with those authorized. The Commission rejected Mt. Baker's suggestion that its construction permit could be reinstated and a forfeiture imposed:

> Mt. Baker contends that the imposition of a forfeiture is often the penalty for unauthorized construction of a broadcast station. [A] forfeiture might be appropriate in some cases where construction differs by a modest degree from the facilities authorized. The departure in this case is clearly not modest; for example, operation with 10.3 kW ERP, compared to 3630 kW authorized. In addition, there are no significant mitigating circumstances in this case, but there are substantial aggravating factors. In that regard, improper construction did not occur through error or inadvertence; the facts clearly indicate an effort to deceive the Commission**.** A license application would have revealed what had been built and would, almost certainly, have been denied, but Mt. Baker did not file one, and the deception was not uncovered until the Field Operations Bureau inspection.

3 FCC Rcd at 4778 ¶ 8. See ID at ¶ 122.

21. *Alleged Misrepresentations and Lack of Candor Concerning These Two Proceedings*. Thereafter, Parker filed several applications, including transfer and assignment applications. Question 4 of the version of Forms 314 and 315 in effect at the time, dealing with the assignee's/transferee's qualifications, asked:

> (a) Has an adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following: any felony, antitrust, unfair competition, fraud, unfair labor practices, or discrimination?
>
> (b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in 4(a)?

> If the answer to (a) or (b) above is Yes, attach as Exhibit No. ____, a full disclosure concerning the persons and matters involved, identifying the court or administrative body and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and disposition or current status, of the matter. Information called for by this question which is already on file with the Commission need not be refiled provided: (1) the information is now on file in another application or FCC form filed by or on behalf of transferee; (2) the information is identified fully by reference to the file number (if any); the FCC form number and the filing date of the application or other form containing the information and the page of paragraph referred to; and (3) after making the reference, the transferee states, "No change since date of filing."

Question 7 asked:

> Has the applicant or any party to this application had any interest in or connection with the following:
>
> (a) an application which has been dismissed with prejudice by the Commission?
> (b) an application which has been denied by the Commission?
> (c) a broadcast station, the license of which has been revoked?
> (d) an application in any Commission proceeding which left unresolved character issues against the applicant
> (e) If the answer --- is Yes, state in Exhibit No. --, the following information
> (i) name of party,
> (ii) nature of interest, giving dates,
> (iii) call letters of station,
> (iv) location.

22. Parker gave answers to these questions in six applications filed between March 2, 1989 and August 3, 1992. In a March 2, 1989 transfer application for Station KWBB(TV), San Francisco, California, Parker answered 4(a) and 4(b) "no," 7(a) and 7(b) "yes" and 7(c) and 7(d) "no." ID at ¶¶ 125-27. The application included a narrative statement relating to the Mr. Baker proceeding that read as follows:

> Micheal L. Parker, Vice President and a director of West Coast, ... is an officer, director, and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-8607OIKP. See Memorandum Opinion and Order, FCC 88-234, released August 5, 1988.[6]

He did not, however, report the San Bernardino proceeding. Parker gave identical answers in a December 8, 1989 Form 346 application for a new low power television station in Los Angeles, California.[7] ID at ¶ 128.

[6] He also noted that a petition for reconsideration of the Mt. Baker ruling was pending at the time.

[7] The wording of Question 4 on Form 346 differed from that on the assignment and transfer applications in that it referred to "fraud before another governmental unit." ID at ¶ 124. In view of this wording, the ALJ found that Parker could legitimately answer Question 4 in the negative on Form 346.

23. Later, in a July 21, 1991 transfer application for Station WHRC-TV, Norwell, Massachusetts, Parker answered Question 4 and 7 as he had before, but included for the first time, a narrative concerning the San Bernardino proceeding in response to Question 7, which read:

> Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Micheal Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ["SBBLP"], an applicant in MM Docket No. 83-911 for authority to construct a new commercial television station on Channel 30 in San Bernardino, CA, was such that the general partner in [SBBLP] was held not to be the real party in interest to that applicant and that, instead, for purposes of the comparative analysis of [SBBLP's] integration and diversification credit, Mr. Parker was deemed such. See Religious Broadcasting Network et. al., FCC 88R-38, released July 5, 1988. MM Docket 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. See Religious Broadcasting Network et. al., FCC 9OR-101, released October 31, 1990.

ID at ¶ 129-30. Parker gave similar answers in the November 13, 1991 assignment application for WTVE(TV), Reading, Pennsylvania, the June 4, 1992 assignment application for Station KTMD(TV), Twenty Nine Palms, California, and the August 3, 1992 assignment application for AM International Broadcast Station KCBI, Dallas, Texas. ID at ¶¶ 134-36.

24. With respect to the Dallas application, the Commission's staff processing that application requested additional information regarding whether character issues had been added or requested in the proceedings specified in Parker's answer to Question 7. ID at ¶ 136. Parker then submitted an amendment to the application, stating:

> Two If By Sea Broadcasting Corporation ("Two If By Sea") has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and principals had held interests and which were dismissed at the request of the applicant. This will confirm that no character issues had been added or requested against those applicants when those applications were dismissed.

However, a character issue (i.e., the real-party-in-interest issue) had been added against the dismissing applicant, SBBLP, in the San Bernardino proceeding.

25. *ALJ's Conclusions*. The ALJ faulted Parker's responses for three reasons.[8] First, the ALJ found that Parker should have answered "yes" to Question 4 because the reference to "fraud" in that question was sufficiently broad to encompass the findings made in the Mt. Baker and San Bernardino proceedings. ID at ¶ 123. He found that Parker's response of "no" to Question 4 was false and misleading. ID at ¶¶ 223-25. In addition, the ALJ found that Parker's

[8] The ALJ termed Parker's failure to mention the San Bernardino proceeding in the San Francisco and Los Angeles applications as "negligent." ID at ¶ 227. The ALJ, however, found no lack of candor in this regard. He found that Parker's narrative responses were "incomplete" but not "willfully misleading." ID at ¶ 226.

amendment to the Dallas application was false and misleading. ID at ¶ 229. According to the ALJ, Parker should have reported the Commission's finding in Mt. Baker that there had been an "effort to deceive" although no issue had been added in that case. More importantly, a character issue clearly had been added in the San Bernardino proceeding. Although the ALJ found Parker's conduct disqualifying, he held that RBI would not be found unqualified if it severed its relationship with Parker.[9] ID at ¶¶ 233-35.

26. Exceptions. RBI and Parker dispute the ALJ's finding that Parker committed misconduct. They assert that the ALJ misconstrued the scope of Question 4, which, they say, refers to non-FCC misconduct. They also assert that the fact Parker reported the Mt. Baker and San Bernardino proceedings in response to Question 7 rebuts any inference that his failure to answer Question 4 in the affirmative was intended to mislead the Commission. Additionally, they maintain that Parker relied on the advice of counsel in preparing the Dallas amendment.

27. Adams supports the ALJ's findings. Moreover, Adams contends that Parker's misconduct should also disqualify RBI. The Enforcement Bureau agrees with RBI that Question 4 relates to non-FCC misconduct. The Bureau, however, agrees with Adams that the Dallas amendment lacked candor and that if Parker is disqualified, so is RBI.

28. Discussion. Although Parker's responses were not satisfactory in all respects, we find that the ALJ's conclusion that Parker committed disqualifying misconduct is flawed and not supported by the record as a whole. We agree with RBI, Parker, and the Bureau that Question 4 referred to adverse findings by courts and administrative bodies other than the FCC. The requirements of Question 4 derive from the determinations in the Commission's policy statements on character as to what types of misconduct are relevant to an applicant's qualifications. The policy statements consistently discuss the types of misconduct listed under Question 4 as "non-FCC" misconduct, i.e., "misconduct which may be a violation of law but does not specifically contravene the Communications Act or any specific Commission rule or policy." Character Qualifications, 102 FCC 2d 1179, 1183 n. 11 (1986). See Character Qualifications, 102 FCC 2d at 1193-1208 ¶¶ 31-52. See also Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252, ¶¶ 3-4 (1990), modified, 6 FCC Rcd 3448 (1991). Likewise, the instructions to the current forms clarify that the question seeks information regarding non-FCC misconduct:

> An assignee must disclose in response to Item 8 [the current counterpart to Question 4] whether it or any party to the application has been the subject of a final adverse finding with respect to certain relevant non-broadcast matters.

FCC 314 Instructions, Instructions for Section III –Assignee, Item F (Apr. 2001). Moreover, the Bureau advocates this interpretation.

29. Accordingly, we find that Question 4 did not require Parker to report proceedings before the FCC, and his answer to Question 4 was therefore appropriate. Moreover, we agree

[9] In response to the ALJ's findings, RBI submitted a "Section 1.65 Statement" on May 21, 2001, indicating that Parker had resigned as president and director of RBI, that his stock interests had been placed in a voting trust or otherwise transferred, and that a management agreement between Parker and RBI had been terminated.

with RBI and Parker that it would be incongruous to find that Parker lacked candor in failing to report the Mt. Baker and San Bernardino proceedings in response to Question 4, when he did report those same proceedings under Question 7 once they were resolved.

30. We next address whether Parker's response contained in the Dallas amendment lacked candor. This is a closer question, but we conclude that the record does not support disqualification. Parker's response to the staff's question: "This will confirm that no character issues had been added or requested against those applicants when those applicants were dismissed" (RBI Exh. 46 , Att. J at J3; Adams Exh. 55 at 3) was inaccurate in that a real-party-in-interest issue, i.e., an issue potentially bearing on character, had been added against SBBLP in the San Bernardino proceeding.[10] Moreover, Parker admits that he reviewed the amendment and was aware that an issue had been added in the San Bernardino proceeding. Tr. 1991-92. However, Parker explained that he answered as he did because he believed that the issues in the San Bernardino proceeding had been resolved favorably to him at the time the application was dismissed. In short, Parker viewed the thrust of the staff member's question to be whether unresolved character issues had been added. He testified:

> . . . [M]y belief was that there weren't any issues that were outstanding in 1992 in this case; that it had been resolved. . . . I'm simply saying, in 1992, it was clearly my understanding that there were no issues pending and that they had been resolved in that case . . . in terms of responding to the Commission, I thought I was signing an accurate statement. . . . And I believe that . . . there weren't any [character issues] added or requested at the time [the applications] were dismissed. . . . [T]his sentence deals with when [the application] was dismissed. [I]n terms of an adverse finding that would haunt me forever, I did not believe that to be the case, and clearly, I believe, that when the [R]eview [B]oard approved the settlement . . . I believed that all adverse rulings had been resolved . . . .

Tr. 2027-28, 2030, 2065, 2067, 2070. He further testified that his response reflected an opinion letter and long discussion with his communications counsel, Clark Wadlow, as to the significance of the various rulings in the San Bernardino proceeding. Tr. 2008-09, 2024.

31. We find that, on balance, the record as a whole does not support the conclusion that Parker's response was consciously intended to deceive the Commission. His earlier narrative response to Question 7 (see paragraph 23, supra) effectively rebuts the inference that the amendment was intended to conceal from the staff the existence of the real-party-in-interest issue or the Board's ruling. On the contrary, the narrative response refers to both the issue and the Board' ruling, albeit without further elaboration. In view of the fact that Parker had already voluntarily put this information before the Commission, we see no reason to infer that he somehow intended to conceal this information by not mentioning the real-party-in-interest issue and the Board's ruling a second time, in response to the staff's inquiry. In this regard, the record does not indicate that the staff requested the amendment because it wanted more information than was already supplied in the narrative. Rather, the parties stipulated that the staff member

[10] No character issue had been added or requested in the Mt. Baker proceeding.

involved requested the amendment pursuant to her usual practice of asking whether character issues had been sought or added, in all cases where an applicant identified prior FCC applications that had been dismissed. Bureau Exh. 2 at 2-3 ¶¶ c-e. Parker had no reason to know that in requesting the amendment the staff had not fully considered the information that he had already disclosed.

32. Moreover, the record directly corroborates Parker's contention that he had no motive to conceal the rulings regarding the real-party-interest issue, because his counsel had advised him that the real-party-in-interest issue had been resolved in a manner that did not reflect adversely on his character. The opinion letter, written a year and a half before the Dallas amendment was filed, states in its entirety:

> You have asked our opinion on the impact on your qualifications to be a principal in an FCC licensee of the conclusions on the real-party-in-interest issue against San Bernardino Broadcasting Limited Partnership ("SBBLP"), an applicant in the Channel 30, San Bernardino, California licensing proceeding before the FCC.
>
> As you are aware, we were counsel to a competing applicant in that proceeding. Since we had (and still have) an attorney-client relationship with you, we were not directly involved in the trial of that issue. However, we have reviewed the decision and are generally familiar with the facts and issues involved.
>
> It is our opinion that the Administrative Law Judge ("ALJ") simply concluded that SBBLP had failed to report your activities and involvements with SBBLP – which the ALJ found to be such as to make you a real-party-in-interest. However, the ALJ did not find that you had done anything irmproper [sic] or that anything you had done reflected adversely on you.
>
> As I mentioned above, we have continued to represent you in other FCC proceedings, as we have for the last eight or ten years. You serve as a principal of other FCC licensees. We are aware of no question that has ever been raised as to your qualifications to hold such a position.
>
> Please do not hesitate to contact me if you need further information on this subject.

Letter from R. Clark Wadlow to Mr. Micheal L. Parker (Feb. 18, 1991); RBI Exh. 46, Att. D; Adams Exh. 58. The records of Wadlow's firm disclose that Parker was billed for a 45 minute teleconference regarding character issues on February 18, 1991, the day the letter was written. This is consistent with Parker's testimony that the letter reflects a long discussion of the matter between himself and Wadlow. Adams Exh. 59. Wadlow testified at the hearing that, in light of the Board's approval of a settlement in the San Bernardino proceeding, he believed that no findings adverse to Parker had been made.[11] Tr. 1822, 1829, 1854-55.

[11] But see Allegan County Broadcasters, Inc., 83 FCC 2d 371 (1980), which permits the reimbursement of a dismissing applicant despite unresolved issues concerning the applicant's character.

33. Although Wadlow's letter did not warrant Parker's statement that no issue had been added (since one had been),[12] it tends to rebut the inference that Parker had a motive to deflect Commission scrutiny from the real-party-in-interest issue, which Wadlow said did not reflect adversely on Parker's qualifications. In interpreting the technical significance of the San Bernardino decision with respect to his qualifications to be a licensee, Parker could reasonably rely on the advice of counsel.[13] See Fox Television Stations, Inc., 10 FCC Rcd 8452, 8478 ¶ 60, 8500-01 ¶ 119 (1995). Parker did not have notice that, contrary to Wadlow's advice, the Commission viewed the San Bernardino proceeding as raising questions that affected Parker's ability to acquire stations, until five years later, when the Commission held in the Hartford, Connecticut assignment proceeding that "Serious character questions also remain regarding the assignee Parker/TIBS." Two If By Sea Corp., 12 FCC Rcd 2254, 2257 (1997). Until the petitioner to deny in the Hartford proceeding argued that the San Bernardino proceeding raised such questions, the Commission routinely granted Parker- related applications, despite the fact that his response to Question 7 included a reference to the San Bernardino proceeding. Four of these applications had been granted by the time of the Dallas amendment. We agree with the Bureau's observation that the Commission's prior actions involving Parker created a "climate of ambiguity" that could reasonably have led him (and his counsel) to believe that the issue had been resolved in a manner that did not affect his qualifications. See Bureau's Proposed Findings and Conclusions of Law at 63-64 ¶ 129; Reply Findings and Conclusions of Law at 9-10 ¶ 18, 14 ¶ 23. We are satisfied that Parker believed that the staff's question focused on unresolved character issues and that Parker believed that no such issues remained.

34. In view of the foregoing, we find there is no reason to believe that Parker's response resulted from an intent to conceal incriminating information or that it constitutes a misrepresentation or lack of candor. The ALJ's misinterpretation of Question 4 and his failure to give adequate consideration to the factors discussed above undermine the ALJ's opinions as to Parker's credibility.[14] Accordingly, we decline to follow Adams' suggestion that the ALJ's opinions as to Parker's credibility should be given deference. Therefore, we disagree that Parker needs to sever his ties with RBI for RBI to remain qualified.

IV. RBI's RECORD – COMPLIANCE

[12] Both Wadlow and attorney Eric S. Kravetz, who drafted the amendment, testified that they would not have stated that no issue had been added. Tr. 1813, 2372-73. Wadlow further testified that he was aware that a character issue had been added in the San Bernardino proceeding, but that he believed the final settlement constituted a resolution of the character issue that did not reflect adversely on Parker. Tr. 1822. Parker testified that it was this understanding that made him believe that any character issue had been dismissed, so that his amendment was correct. Tr. 2065.

[13] Moreover, Wadlow's advice was not unreasonable on its face. As the Commission subsequently held, a finding that a person is a real-party-in-interest does not necessarily reflect adversely on that person's character. See Evansville Skywave, Inc., 7 FCC Rcd 1699, ¶¶ 13-14 (1992) (an applicant's failure to demonstrate that its ownership structure will be effectuated as described does not, without more, raise a question of egregious misconduct).

[14] In particular, the ALJ had no basis for finding that certain testimony by Parker (Tr. 2652), in which Parker disagreed with the ALJ's characterization of his previous testimony, showed an "added lack of candor." ID at ¶ 231.

35. Initial Decision. The ALJ considered WTVE's performance for the license term beginning August 1, 1989 and ending August 1, 1994 to determine whether RBI was entitled to a renewal expectancy in the comparative analysis. ID at ¶ 47. He evaluated WTVE(TV)'s performance using five factors derived from the Review Board's decision in Fox Television Stations, Inc., 8 FCC Rcd 2361, 2366-68 (Rev. Bd. 1993), recon. denied, 8 FCC Rcd 3583 (Rev. Bd. 1993), modified, 9 FCC Rcd 62 (1993), aff'd sub nom. Rainbow Broadcasting, Inc. v. FCC, 1995 WL 22486 (D.C. Cir. 1995). These five factors are: (1) the efforts made to ascertain community needs and interests; (2) the programming response to those needs and interests; (3) the incumbent's reputation in the community for serving the needs and interests; (4) the record of compliance with the Communications Act and the Commission's rules and policies; (5) evidence of community outreach in providing a forum for the expression of local views. With respect to the fourth factor, although the ALJ found RBI qualified to be a licensee, he held that Parker's misrepresentations and lack of candor were relevant to whether RBI was entitled to a renewal expectancy in the comparative analysis. ID at ¶ 110. The ALJ also found that Parker was responsible for other violations that detracted from RBI's record during the license term. ID at ¶¶ 203, 246. Specifically, he found that Parker had effectuated an unauthorized transfer of control of WTVE(TV) and had failed to disclose to the Commission the facts related to this occurrence. The ALJ further found that Parker had violated the Commission's reporting rules in other respects.

36. The ALJ found that the unauthorized transfer of control was related to changes in ownership in connection with RBI's Chapter 11 bankruptcy proceeding. RBI was in bankruptcy from 1986 until March 12, 1992. ID at ¶ 56. RBI's 1988 Ownership Report indicated that RBI had 50,000 outstanding shares of stock divided among 18 stockholders. ID at ¶ 33. The largest stockholders were Dr. Henry Aurandt and his wife, who held 18,000 shares. In 1989, as part of its effort to resolve its bankruptcy, RBI entered into a Management Services Agreement (MSA) with Parker, who was an experienced broadcaster, and his company, Partel, Inc. (Partel). ID at ¶ 33-34. RBI filed the MSA with the bankruptcy court in 1989, but did not file the MSA with the Commission until 1997. (The MSA was, however, mentioned in a pleading filed in 1992. ID at ¶¶ 45, 111.) In conjunction with the MSA, Parker became president and a director of RBI, with full authority to conduct the operations of WTVE(TV). ID at ¶ 34-35.

37. Parker led efforts to implement a Chapter 11 reorganization plan. The reorganization plan approved by the bankruptcy court called for the cancellation of RBI's existing stock and the issuance of new stock. ID at ¶ 36. In anticipation of the plan becoming effective, RBI, on August 14, 1991, filed a short form transfer of control application, seeking Commission approval of the assignment of WTVE(TV) from RBI, as debtor-in-possession, to RBI. The short form was used because, despite the issuance of stock to new stockholders, including Partel, it appeared that RBI's existing stockholders would continue to own more than 50 percent of RBI's stock. The Commission approved the transfer on August 27, 1991, specifying that the transfer must be consummated by October 28, 1991. Id.; Adams Exh. 22.

38. As set forth in the August 14 application, Partel, Parker's company, would own 118,467 of the 399,044 new shares, replacing Aurandt as the largest single stockholder. ID at ¶ 37. This resulted in a conflict between Parker and Aurandt over control of RBI. On September 14, 1991, Aurandt called a stockholder's and directors meeting that purported to terminate the MSA, based on Parker's alleged "malfeasance." ID at ¶ 38. Parker contested this action, and, on October 15, 1991, issued new stock, with some variations from the number of shares reported to

the Commission. ID at ¶¶ 38-39. Parker then requested and received an extension of time from the Commission, until December 27, 1991, to consummate the transfer of control. ID at ¶ 41. On October 30, 1991, Parker convened a meeting of stockholders and directors to elect a new board of directors and to resolve the dispute with Aurandt. ID at ¶ 42.

39. On November 13, 1991, after the stock had been issued on October 15, RBI filed a long form transfer application indicating that shares in RBI would increase to 419,038. ID at ¶ 43. The long form application was intended to supersede the short form, since it appeared that more than 50 percent of RBI's stock ultimately might pass to new stockholders. The Commission approved the long form transfer on February 14, 1992. The ALJ found that prior to Commission approval of the long form application Parker already fully controlled RBI and Parker "knew that to be the fact." ID at ¶ 43. See also ID at n.8. (Parker admitted that, as of October 30, 1991, he had effective voting control of RBI.)

40. The ALJ found that an unauthorized transfer of control occurred when in October 1991, control passed to a new group of stockholders appointed and led by Parker. ID at ¶ 214. The ALJ observed that the November 13, 1991 transfer application did not reflect that new stock had already been issued in October and that new directors loyal to Parker had been elected. Rather, the application erroneously reflected RBI's old ownership structure and directors. Similarly, ownership reports in 1992 and 1993 failed to list the new directors. ID at ¶¶ 45-46. According to the ALJ, "The Commission was deprived of sufficient information concerning the corporate control of RBI" during this period. ID at ¶ 46. The ALJ found that "The ultimate travesty was holding back from disclosing to the Commission until 1997, the fact and effect of the MSA." ID at ¶ 215.

41. Additionally, the ALJ found that RBI had been untimely in reporting a May 1998 Network Affiliation Agreement with Telemundo. The Telemundo Agreement was required to be reported because it gave Telemundo an option to acquire WTVE(TV). ID at ¶¶ 114-17.

42. Exceptions. RBI denies that Parker ever improperly controlled RBI, since he acted with the approval of RBI's stockholders. RBI maintains that Parker appropriately sought Commission approval for the changes in ownership related to the reorganization. According to RBI, the reporting failures were inadvertent and reflected no motive to deceive the Commission. Additionally, RBI argues that the ALJ should not have considered the 1998 reporting violation involving the Telemundo Agreement, since it occurred after the license term in question. Adams and the Bureau support the initial decision's determination that these deficiencies reflect adversely on RBI's eligibility for a renewal expectancy.

43. Discussion. We find that the record in this case does not disclose misconduct that significantly detracts from RBI's record during the 1989-94 license term. As the preceding section of this decision indicates, we find that Parker did not lack candor in his reporting of the Mt. Baker and San Bernardino rulings to the Commission.[15] Moreover, we find no basis to conclude that Parker knowingly effectuated an unauthorized transfer of control of WTVE(TV). The record reveals no more than that, in a complex and contentious bankruptcy proceeding, RBI fumbled its reporting obligations.

[15] The amendment to the Dallas application, which contained the inaccurate statement, was not filed on behalf of RBI and is therefore irrelevant to RBI's record of compliance.

44. RBI timely sought and received Commission approval for transferring control of WTVE(TV). On August 14, 1991, RBI filed a "short form" or "pro forma" application for the assignment of WTVE(TV) from RBI, as debtor-in-possession, to RBI. Adams Exh. 21. The use of a short form application is appropriate in the case of corporate reorganizations that do not involve a "substantial change" in ownership. 47 C.F.R. § 73.3540(f)(4). See also 47 U.S.C. § 309(c)(2)(B). The test for substantiality is generally: (a) whether 50 percent or more of the stock is being transferred, and (b) whether, as a result of the transaction, 50 percent or more of the outstanding stock will be held by a person or persons whose qualifications have not been approved or passed on in a long form application for the particular station involved. See Barnes Enterprises, Inc., 55 FCC 2d 721, 725 ¶ 8 (1975). In this case, of the 399,044 shares proposed to be issued, 56.7 percent would go to existing RBI stockholders. Partel, a new shareholder, would become the largest single stockholder with a 29.7 percent interest, while Aurandt's interest would drop from 36 percent to 18.7 percent. Adams Exh. 21. On these facts, the short form application could arguably be used, although given the degree of Parker's influence as the single largest stockholder, a long form would have been preferable.

45. When Parker issued stock on October 15, 1991, the shares issued differed from those specified in the application in four respects. See Adams Exh. 24. First, 3,960 shares for new stockholder Meyer Weiner were never issued.[16] Second, an additional 5,935 shares were issued to Partel with an option for RBI creditor Meridian Bank to purchase them for $1 a share. Parker explained that this had been done in return for Meridian's forbearance of an overdue payment. Tr. 800-01. Third, Parker refrained from issuing 50,812 shares to Aurandt. Parker testified that on July 31, 1991, a federal district court entered a judgment against Aurandt and, on October 11, 1991, Parker was served with an order garnishing Aurandt's stock to satisfy the judgment. Reading Exh. 15; Tr. 888-89, 916. Parker withheld the stock pursuant to the garnishment order.[17] Adams Exh. 28 at Exh. 4. Fourth, Parker issued 17,674 shares to an entity called STV Reading, Inc. (STVR). Parker explained that STVR, which was owned mainly by Aurandt, was an RBI creditor that elected to take an equity interest in lieu of partial repayment of debt.[18] Tr. 910, 975.

46. As a result of these differences, of the stock actually issued, only 47.6 percent remained in the hands of existing stockholders, while 4.8 percent went to STVR. Thus, if STVR is considered a new stockholder, Parker should have sought long form approval before issuing the stock. However, since Aurandt owned some 90 percent of STVR, it was reasonable for Parker not to treat STVR as a new stockholder and to rely on the Commission's short form authorization in issuing the stock. Moreover, less than a month later, RBI filed an updated, long-form transfer application on November 13, 1991, anticipating the possibility that the ultimate disposition of Aurandt's shares would require such approval. Adams Exh. 28. Accordingly, even if a long form should have been filed prior to the issuance of new stock, the record does not warrant a finding that Parker acted in bad faith in filing a short form.

[16] Weiner apparently withdrew as a stockholder.

[17] Absent a finding that Parker's action was not an appropriate response to the garnishment order, we find no basis for the ALJ's apparent disapproval of Parker's "power" to withhold stock from Aurandt. ID at ¶ 40.

[18] In view of Parker's unrebutted testimony that Aurandt elected to have stock issued to STVR, we see no basis for the ALJ to find that Parker "caused the issuance" of shares to STVR. ID at ¶ 40.

47. Additionally, we find no basis to conclude that the failure of the long form to disclose the prior issuance of stock was the result of a deliberate deception. When asked whether he felt that he had an obligation to report the prior issuance of the stock, Parker testified that:

> . . . [I]t really made no difference. . . Frankly, I don't think I thought about it at all. I had FCC counsel dealing with these matters. And my understanding is that there is no transfer, whether it is reported or unreported, that the 316 [short form] was for the purposes of coming from debtor in possession to the new corporation. But if you compared the old ownership to the new ownership, there was no transfer of control. . . . I don't recall the issue coming up even, [19] did I need to disclose to the Commission that we've issued the shares or not. And I think the representations we made in the 315 [long form] for the transfer demonstrated to the Commission where our problem was.

Tr. 922-23. Although Parker's terminology is somewhat confusing, he offers a credible explanation for why he did not refer to the prior issuance of stock in the long form application. As noted above, the Commission's generally applicable test requires use of a long form application whenever 50 percent or more of a corporation's stock passes to "new" stockholders. As discussed previously, Parker's issuance of stock on October 15, 1991 can be seen as transferring less than 50 percent of RBI's stock to new stockholders. This gave him a basis to believe that his issuance of stock was legitimately authorized pursuant to approval of his short form application, and he therefore had no motive to conceal the issuance of this stock. Parker's subsequent understanding that future events might potentially result in the ultimate transfer of more than 50 percent of RBI's stock to new stockholders gave Parker reason to request long form authority in anticipation of these events. It did not, however, undermine the basis on which Parker issued the stock on October 15, which reflected only the immediate impact of the transfer. As long as Parker obtained long form authority before the contingencies that might have resulted in a substantial change of ownership actually occurred, Parker's conduct did not violate the rules. A full explanation of the intermediate steps involved in the transfer would have been desirable, but its omission does not imply that Parker was attempting to conceal improper conduct.

48. A related matter also involved STVR. Parker admits that at the shareholder's meeting on October 30, 1991, at which new directors were elected, he voted the STVR shares pursuant to invalid proxies that he obtained from STVR's minority owners. Tr. 636, 970, 975-78.[20] The invalid proxies, however, did not have a substantial impact on the control of RBI. The minutes of the October meeting indicate that Parker's slate of candidates received 249,311 votes, representing 67.7 percent of issued shares, 59.5 percent of authorized shares (including Aurandt's unissued shares), and over 90 percent of the votes participating at the meeting. Adams Exh. 30 at 38, 43, 70. We note that legal proceedings between Parker and Aurandt eventually, in August 1992, resulted in a settlement agreement stating that:

[19] Like the the transfer application, transmittal letters from RBI's communications counsel to the Commission dated January 29, 1992 (Adams Exh. 29) and February 7, 1992 (Adams Exh. 30) speak of the stock issuance in prospective terms, suggesting that counsel was unaware that the stock had been issued.

[20] He also used the invalid proxy at a shareholders meeting on February 4, 1992 that ratified the results of the previous meeting. Adams Exh. 13 at 74-121.

> . . . [A]ll parties hereto agree that the Parker Board shall be deemed the validly elected and duly authorized board of directors as of October 30, 1991, [and] that all actions taken by such board shall be deemed valid acts of the corporation . . . .

Adams Exh. 27. In view of these circumstances, to infer that Parker intended to conceal the new directors, who Parker contended were validly elected, is pure speculation. Parker's claim that RBI's failure to update the listing of its directors in a timely fashion was an oversight is entirely credible. Tr. 812.

49. More generally, we find no foundation for the ALJ's finding that: "Mr. Parker . . . succeeded in snatching control from an unwilling board of directors." ID at ¶ 216. Parker's actions were consistent with the reorganization plan confirmed by the bankruptcy court. The record indicates that the plan was unanimously approved in August 1991 by RBI's former board of directors, including Aurandt. RBI Exh. 16. The minutes of a shareholder' meeting on November 7, 1990, shows that Parker urged the old stockholders to vote for the reorganization plan because their consent was essential for its approval by the bankruptcy court. Adams Exh. 13 at 10. See also 11 U.S.C. §§ 1121-29. As the settlement discussed in the preceding paragraph indicates, we have no reason to treat the September 14, 1991 actions instigated by Aurandt as having any validity.

50. Finally, we see no basis to find that Parker intentionally concealed the MSA. Parker testified that he thought the MSA had been disclosed. Tr. 625-26. Although RBI neglected to file the MSA with the Commission in a timely manner, the agreement was in effect a public document that RBI submitted for approval of the bankruptcy court, which approved the agreement on August 28, 1990, a year before Parker's supposed "coup." Adams Exh. 14 at 10; 18, 19 at 15; Tr. 626. The existence of the MSA was disclosed to the Commission when RBI routinely reported in a February 7, 1992 amendment to the transfer application an order of the bankruptcy court confirming RBI's plan of reorganization. Adams Exh. 30 at 8. There has been no showing that the terms of the MSA provided a motive to conceal it. All of this suggests, as do the circumstances discussed in the preceding paragraphs, that RBI's reporting deficiencies reflect its preoccupation with the bankruptcy proceeding and poor communications between RBI and its counsel, rather than any intentional misconduct. We will not give these matters significant weight in assessing RBI's record during the 1989-94 license term.[21] However, even if we did, they would simply buttress the finding made in the next section that RBI's record of performance during the 1989-94 license term was minimal and does not warrant a renewal expectancy.

IV. RBI's RECORD – OTHER FACTORS

51. Initial Decision. During the 1989-94 license term, WTVE(TV) carried a "home shopping" format and was an affiliate of the Home Shopping Network. ID at ¶¶ 52, 54. Because the home shopping format occupies 53-55 minutes per hour, WTVE(TV)'s non-entertainment programming was mainly limited to the five to seven minute breaks in home shopping

[21] RBI's alleged failure to timely report the 1998 Telemundo Network Affiliation Agreement occurred after the close of the 1989-94 license term and will therefore not be considered. Likewise, Adams' allegation that RBI failed to report, after the close of the license term, the involvement in RBI's affairs of Thomas Root, an individual found to have committed misconduct, is of no consequence.

programming. ID at ¶¶ 60-61. During some time periods, such as weekends and holidays, non-entertainment programs of more than 15 minutes were aired. Specific short programs were not regularly scheduled and were not reflected in newspaper television listings.

52. WTVE(TV)'s financial condition affected its non-entertainment programming. From the beginning of the license term until March 12, 1992, RBI was in Chapter 11 bankruptcy. ID at ¶ 56. Even after it emerged from bankruptcy, the station always operated at a loss. ID at ¶ 57. The resulting reductions in facilities and staff adversely affected the station's production of public service programming. ID at ¶ 58-59. In particular, Parker did not divert funds from profitable operations to support public service programming and adopted a policy of limiting the production of public service programming to cut costs.

53. By RBI's account, the amount of non-entertainment programming increased during the course of the license term from 2.2 percent in 1989 to 7.6 percent in 1994. Some 35 percent of the programming was in the form of public service announcements. Adams credits the station with somewhat less non-entertainment programming. ID at ¶ 48.

54. Station personnel testified that during the license term, the staff ascertained community needs by reviewing local newspapers, contacting members of the community, and receiving materials from various organizations. The staff also sent questionnaires to community leaders and schools and conducted interviews. ID at ¶¶ 49-51. However, the testimony indicated that formal ascertainment did not provide a large input into station programming and the staff mostly relied on their informal judgment as to what programming they deemed pertinent to community needs. ID at ¶ 51.

55. RBI listed several two to three minute programs, some of which were produced by the station, as responsive to community needs. ID at ¶¶ 62-74. These included: (1) "Streetwise" (interviews on local issues), (2) "In Touch" (interviews on community topics), (3) "News to You" (from a satellite feed), (4) "Healthbeat" or "Health Report" (from a news company, with local wrap arounds), (5) "Elderly Report" (from a news company, with local wrap arounds), (6) "Community Outreach" (interviews of local interest), (7) "Take 3" (produced by local youths), (8) "Kids Korner" (RBI produced program dealing with issues of interest to children), (9) programming produced by the Pennsylvania State House, (10) "Informative Moment" (Hispanic-oriented interviews), (11) "For the People (RBI produced political program), and (12) "Around Our town" (locally produced community events). Many of these shows were introduced during the 1992-94 time period.

56. Other programming included PSAs. During the license term, WTVE(TV) averaged 30 to 50 PSAs a day. Some were locally produced and some obtained from various organizations. Two PSAs won awards from the Pennsylvania Association of Broadcasters. ID at ¶¶ 75-76. During the latter part of the license term, WTVE also carried a variety of 30 minute children's' programs on weekend mornings. ID at ¶¶ 77-83. Other long-form programming sometimes included documentaries and specials. ID at ¶ 84. WTVE(TV) broadcast local weather reports but no local news. ID at ¶¶ 85-86. WTVE(TV) also carried a variety of religious programs.

57. At the hearing RBI presented favorable testimony from 16 community witnesses concerning WTVE(TV)'s programming. ID at ¶¶ 88-103. Adams presented adverse testimony

from five community witnesses, mainly complaining about the lack of local news. ID at ¶¶ 104-08.

58. The record also reflects WTVE(TV)'s community outreach activities. ID at ¶ 109. These included fund raisers, educational programs, and assistance to local law enforcement authorities. WTVE(TV) also produced a program for a local hospital, donated space for a local public television station, and participated in programs opposing drunk driving and supporting women's careers in broadcasting.

59. The ALJ found ALJ's programming during the 1989-94 license term "minimal" and undeserving of a renewal expectancy. ID at ¶¶ 203, 246. He found that WTVE(TV)'s ascertainment efforts fell short of the "extensive measures" considered substantial in past cases. ID at ¶ 194. He also found that WTVE(TV)'s non-entertainment programming was quantitatively minimal, that it lacked regularly-scheduled news and public affairs programming, and that it relied excessively on PSA type programming. ID at ¶¶ 194, 198-99. He found that WTVE(TV)'s community reputation was, at best, mixed and that the station's outreach programs, while commendable, were insufficient to overcome its minimal programming performance. ID at ¶¶ 201-02.

60. Exceptions. RBI contends that the ALJ understated the merit of its programming. RBI asserts that its staff made serious efforts to ascertain community needs and that the amount and type of programming was substantial considering the constraints of the home shopping format and WTVE(TV)'s precarious financial condition. It argues that, in view of deregulation, not every television station in a market needs to present regularly scheduled news and public affairs programming. Additionally, RBI contends that the ALJ gave insufficient weight to the favorable testimony of community witnesses and the station's community outreach efforts. Adams and the Bureau support the ALJ's finding that WTVE(TV)'s program performance was minimal.

61. Discussion. We agree with the ALJ, the Bureau, and Adams that WTVE(TV)'s performance during the 1989-94 license terms was minimal and not deserving of a renewal expectancy. We have already considered the fourth of the ALJ's five factors in the preceding section discussing compliance with the Act and the Commission's rules. We now consider the remaining factors.

62. We generally agree with the ALJ that WTVE(TV)'s ascertainment efforts were unexceptional. This factor, however, has little probative value. The Commission long ago determined that requiring adherence to specific ascertainment procedures did not serve the public interest. See Deregulation of Radio, 84 FCC 2d 968, 993 ¶ 56 (1981). The Commission stated: "To the extent that parties may wish to raise questions concerning [ascertainment] efforts, such questions should be directed to the realities of the program proposal of the applicants, or the responsiveness of licensees, rather than to the ritual of ascertainment." Id. We will therefore turn to WTVE(TV)'s programming and not dwell on the specifics of WTVE(TV)'s ascertainment procedures.

63. During the 1989-94 license terms, WTVE(TV) carried little non-entertainment programming. For most of the term, the station carried no regularly scheduled news. Adams Exh. 2 at 3. RBI's own data indicates that it carried an average of 3.35 percent total non-

entertainment programming and 2.15 percent locally-produced programming.[22] By contrast, in Video 44, 5 FCC Rcd 6383, 6383 ¶ 6, 6385 ¶ 18 (1990), recon. denied, 6 FCC Rcd 4948 (1991), the Commission characterized as "substantial" the record of an independent UHF television that station that averaged a much higher 0.92 percent news, 16.54 percent total non-entertainment programming and 4.37 percent local programming. Even after the station in Video 44 engaged in a "wholesale abandonment" of public service programming, it still carried 4-5 percent non-entertainment programming, an amount higher than the 3.35 percent average for WTVE(TV).

64. Additionally, WTVE(TV) relied heavily on PSAs in responding to ascertained needs. During the license term, by our calculation, an average of 60.53 percent of WTVE(TV)'s non-entertainment programming was in the form of PSAs.[23] Although we believe that PSAs can be an effective means of meeting community needs, we have admonished licensees not to rely on PSAs as the primary method of responding to ascertained needs. Public Service Announcements, 81 FCC 2d 346, 368-69 ¶ 47 (1980).

65. The fact that WTVE(TV) utilized a home shopping format does not warrant a different conclusion. In finding that home shopping stations could adequately address the needs and interests of the community, the Commission determined that home shopping stations would have to comply with the same rules as other television broadcast stations. Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 5321, 5327 ¶ 31 (1993). Moreover, in approving the home shopping format, the Commission specifically cited data indicating that the home shopping format was compatible with the presentation of a substantial quantity of public service programming. For example, the Commission noted with approval the assurances of a large home shopping broadcaster. The broadcaster indicated that its stations significantly exceeded the guidelines that the Commission formerly applied to identify stations warranting review because of minimal performance, i.e., five percent news and public affairs programming, five percent local programming, and 10 percent total non-entertainment programming. Id. at 5327 ¶ 30. The broadcaster represented that its stations averaged 7.6 percent news and public affairs programming, 7.6 percent local programming, and 10.2 percent total non-entertainment programming. Accordingly, WTVE(TV) did not measure up to the factual expectations that supported the Commission's favorable conclusions regarding the home shopping format.

66. Aside from its quantitative deficiencies, WTVE(TV)'s programming generally appears to have been responsive to local needs and interests, if not to an exceptional degree. The station's non-entertainment programs were presented throughout the day, but their extremely short duration, typically three minutes or less, reduced their impact. The station appears to have enjoyed a generally favorable impression in the community, but some witnesses noted the absence of news coverage. Compare ID at ¶¶ 88-103 with ¶¶ 104-08. WTVE(TV)'s community outreach activities, while meritorious, have little significance. A station's entitlement to a

[22] See Appendix. These figures were derived from RBI Exh. 8, App. A, which lists the number of minutes per quarter of various types of non-entertainment programming during the 1989-94 license term. Supporting data for the first two quarters of 1990 was unavailable. The data presented in RBI Exh. 8, App. A is somewhat at variance with the data presented in RBI Exh. 8, App. B, which compiles data based on "composite weeks."

[23] See Appendix. For purposes of its exhibit, RBI classified presentations of less than two minutes as PSAs and programs of two minutes or more as programs. Tr. 392-93. The data presented in RBI Exh. 8, App. B indicates a somewhat lower percentage.

renewal expectancy depends primarily on it record of programming and compliance. Activities unrelated to programming have lesser relevance. See Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd 2111, 2115 ¶ 28 (1991).

67. To some extent, WTVE(TV)'s, unimpressive record simply reflects its poor financial condition during the 1989-94 license term. As noted previously, the station was in bankruptcy until early 1992. The record indicates that the station was never profitable. RBI Exh.5 indicates that the station consistently suffered losses during the license term, ranging from $443,575 in 1989 to $29,999 in 1994. WTVE(TV)'s improving financial picture corresponded to a rise in the amount of public service programming. During the license term, the amount of non-entertainment programming rose from 2.20 percent in the third quarter of 1989 to 7.55 percent in the second quarter of 1994.[24] Similarly, the amount of locally-produced programming rose from 1.64 percent in the third quarter of 1989 to 5.16 percent in the second quarter of 1994.[25] Financial shortcomings cannot, however, fully mitigate inadequate programming. See Simon Geller, 102 FCC 2d 1443, 1447 ¶ 10 (1985). In sum, WTVE(TV)'s quantitative deficiencies and overuse of PSAs are decisive in establishing a minimal broadcast record, notwithstanding the station's home shopping format and poor financial condition. RBI will not receive a renewal expectancy to be factored into the comparative analysis that follows.

V. COMPARATIVE FACTORS

68. Initial Decision. Having determined that RBI was not entitled to a renewal expectancy, the ALJ considered the other factors relevant to the comparison between RBI and Adams: local residence and civic involvement, broadcast experience, comparative coverage, and diversification of ownership. ID at ¶ 248.

69. The ALJ awarded RBI "marginal" or "slight" credit for local residence and civic involvement. ID at ¶¶ 219, 251. He found that 27 of RBI's stockholders lived in WTVE(TV)'s service area and that three had significant civic involvement. ID at ¶¶ 25-27. Adams principals had no local residence or civic involvement. ID at ¶ 24. The ALJ diminished RBI's preference under this factor because of WTVE(TV)'s poor broadcast record. ID at ¶ 219.

70. The ALJ found that two RBI shareholders had broadcast experience and that none of Adam's principals had any. ID at ¶¶ 24, 28-31. The ALJ, however, awarded RBI no credit for this factor.

71. The ALJ awarded Adams a "slight credit" for comparative coverage. ID at ¶ 250.[26] WTVE(TV) currently serves 3,119,889 persons, whereas Adams proposes to serve 4,260,920, 37 percent more. ID at ¶ 21. All of these persons receive at least six other television signals. ID at ¶ 20. The ALJ noted that in 1990 RBI received a construction permit that would allow it to use new facilities that would increase its coverage to 75 percent more than Adams'. ID at ¶ 22. The ALJ did not, however, credit RBI with the coverage of this unconstructed facility. He found that RBI had not obtained a waiver of the Commission policy requiring construction within three

[24] See Appendix.

[25] See Appendix.

[26] The ALJ originally characterized this as a "very slight preference." ID at ¶ 218.

years of the grant. ID at ¶ 22. He also found that RBI had not shown a reasonable likelihood that it would be able to construct on its new site, since RBI has been embroiled in a zoning dispute with local authorities. ID at ¶ 23.

72. The ALJ also awarded Adams a "slight merit" for diversification. ID at ¶ 249.[27] He found that the only one of Adams' principals with an existing media interest had pledged to divest this interest if Adams' application is granted. ID at ¶ 13. He found that Parker, RBI's largest single stockholder, owned Two If By Sea Broadcasting Corporation, the licensee of Station KVMD(TV), Twenty Nine Palms, California, an international AM station in Dallas, Texas, and an FM translator station in Upland, California, and the former proposed assignee of Station WHCT(TV), Hartford Connecticut.[28] ID at ¶ 17; RBI Exh. 4. The ALJ gave greatest weight to the two television stations. ID at ¶¶ 217, 249.

73. Overall, the ALJ concluded that Adams preferences for diversification and comparative coverage outweighed RBI's advantages for local residence and civic involvement, which were discounted because of WTVE(TV)'s unmeritorious programming. ID at ¶ 252.

74. Exceptions. RBI asserts that it is comparatively superior to Adams. RBI faults the ALJ for not giving it credit for the coverage of the transmitter site covered by the construction permit. RBI also asserts that its advantages for local residence, civic involvement, and broadcast experience are entitled to greater weight, especially in comparison to Adams' slight diversification advantage. Adams supports the analysis of the initial decision on these points.

75. Discussion. We find that the ALJ understated RBI's comparative preferences. As an initial matter, we reject Adams' contention that the Court of Appeal's opinion in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993), mandates that we not give weight to factors such as local residence, civic activities, and broadcast experience. Bechtel held that the Commission's former practice of giving comparative weight to the proposed integration of ownership into management was arbitrary and capricious and that the factor was therefore invalid. Under the Commission's former practice, the factors of local residence, civic activities, and broadcast experience were treated as qualitative enhancements of integration. Adams suggests that the invalidity of integration as a criterion implies the invalidity of the three qualitative enhancements as well.

76. The Commission has already considered the implications of Bechtel. We held that it would be pointless to attempt to devise an entirely new set of comparative factors for the small number of remaining comparative renewal cases, of which this case is the last. Implementation of Section 309(j) of the Communications Act, 13 FCC Rcd 15920, 16005-06 ¶¶ 212-14 (1998). Instead, we invited parties to these cases to present whatever evidence they deemed appropriate and indicated that we would attempt to decide cases as nearly as possible pursuant to pre-Bechtel standards. We continue to believe that this is the fairest, most expeditious way to address this case. Moreover, we do not read the court's decision in Bechtel v. FCC as criticizing the continued use of local residence or broadcast experience as criteria. In striking down the Commission's practice of awarding frequently decisive credit for quantitative integration, the

[27] The ALJ originally characterized this as a "significant preference." ID at ¶ 217.

[28] After the close of the record in this case, the Hartford license was awarded to a third party pursuant to a settlement. ID at n2.

court observed disapprovingly: "An applicant whose proposed owner-manager knows nothing about either broadcasting or the community [who proposes to be integrated full-time] will handily win an integration preference over one whose proposed owner-manager is a veteran broadcaster who has spent his whole life in the station's community [but who proposes to be integrated part-time]." 10 F.3d at 882. For these reasons, we do not believe that Bechtel precludes an award of credit for local residence and broadcast experience under these circumstances.

77. Turning to the facts of this case, we find that the ALJ understated the credit due RBI for local residence, civic activities, and broadcast experience. RBI Exh. 2 indicates that 35 of RBI's 50 stockholders[29] live within WTVE(TV)'s service area, including Reading and its suburbs. The ALJ denied RBI credit for eight of these stockholders, because they were not stockholders during the 1989-94 license term. ID at ¶ 25. This was an error. Unlike the renewal expectancy analysis, which focuses on the licensee's performance during the relevant license term, factors such as local residence are based on the applicants' proposals as of the appropriate cutoff date established for the proceeding, in this case April 30, 1999. See Public Notice, Rep. No. 24457A (Mar. 26, 1999). Until the cutoff date, the parties are free to upgrade their proposals. We therefore credit RBI with the claimed local residence of 35 stockholders.

78. Similarly, the ALJ denied RBI credit for eight of 11 stockholders listed as having records of civic activities because RBI did not indicate either that these individuals were stockholders during 1989-94 or that their civic activities occurred during those years. ID at n.4. For the reasons discussed above, this was error and RBI is entitled to credit for all 11 stockholders.[30]

79. The ALJ also denied RBI credit for one of three of its principals with broadcast experience, because he was not a stockholder during the license term. ID at ¶ 32. Again for the reasons discussed above, RBI is entitled to credit for this individual. Moreover, although the ALJ made findings concerning the broadcast experience of its principals, he did not include this factor in his overall comparative analysis. ID at ¶¶ 219, 252. We will give weight to this factor.

80. More significantly, the ALJ "substantially discounted" RBI's credit for all of these factors based on WTVE(TV)'s minimal past broadcast record. ID at ¶¶ 219, 252. The Court of Appeals, however, disapproved this line of analysis in Committee for Community Access v. FCC, 737 F.2d 74, 79-82 (D.C. Cir. 1984). In that case, the Commission diminished a renewal applicant's credit for diversification and integration based on the applicant's insubstantial past record. The court faulted the Commission for ignoring its customary treatment of integration and diversification as predictive of public interest benefits in favor of a "functional analysis" that ignored the renewal applicant's advantages under these criteria. The ALJ here adopted the same invalid analysis. In view of the foregoing, and the fact that Adams claims no credit for local

[29] As indicated by the ownership report dated March 31, 1999, incorporated in RBI Exh. 11.

[30] The ALJ also faulted RBI for not indicating that the civic activities occurred within WTVE(TV)'s service area. The descriptions for 10 of the eleven stockholders contained in RBI Exh. 2, however, indicate communities within WTVE(TV)'s service area. The remaining stockholder, David Mann, lived in a suburb of Reading itself, making it appropriate to conclude that his activities occurred within the service area.

residence, civic activities, or broadcast experience, RBI is entitled to a substantial preference for these factors.

81. Recent events have complicated the resolution of the comparative coverage issue. The ALJ credited Adams with 33 percent (by our computation 37 percent) greater coverage that Adams' proposed site would provide as compared with RBI's current site. ID at ¶ 21. Because all of the areas that are, or would be served, by the respective proposals receive at least six other television signals (ID at ¶ 20), the ALJ awarded only a slight preference to Adams.

82. The ALJ declined to award RBI credit for the coverage of unbuilt facilities covered by a construction permit issued to RBI in 1990, which would give RBI 73 percent greater coverage than Adams' proposal. ID at ¶¶ 22-23; RBI Exh. 48. The ALJ observed that RBI has been embroiled in litigation with Earl Township, in which the site is located, over a zoning dispute and that the original term of the construction permit had expired. See also RBI Exh. 12, Tab B (request for automatic extension of the construction permit); Adams Exh. 41 (stipulated facts Earl Township v. Reading Broadcasting, Inc.). Consequently, he found that RBI had not shown reasonable assurance that the site would be available.

83. On April 30, 2001, RBI submitted a Section 1.65 Statement reporting that the Commonwealth Court of Pennsylvania had upheld an injunction against construction of RBI's proposed tower. RBI also submitted an amendment to the construction permit substituting a modification of RBI's current transmitter site for the disputed proposed site. The amended construction permit would give RBI 29 percent more coverage than Adams.

84. We will not attempt to resolve the ambiguous status of RBI's construction permit at this time. The slight preference that the ALJ awarded Adams as compared with RBI's current facilities should not be dispositive of this case. The new areas to be served by Adams already receive an abundance of television signals. The addition of one more should not decide this case unless the comparison is otherwise essentially deadlocked. As discussed below, we do not find that to be the case.

85. The key issue then is the relative weight due RBI's advantages for local residence, civic activities, and broadcast experience, and Adam's advantage for diversification, resulting from Parker's ownership of distant television interests. As RBI points out, this case resembles cases such as Pueblo Radio Broadcasting Service, 5 FCC Rcd 4829, 4832 ¶ 17 (Rev. Bd. 1990) and Richard P. Bott, II, 4 FCC Rcd 4924, 4930 ¶ 27 (Rev. Bd. 1989), in which similar advantages outweighed smaller diversification preferences. We believe that the same result is warranted here. We give weight to local residence and civic activities because it indicates "knowledge of and interest in the welfare of the Community." Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 396 (1965). In this case, there is a clear difference between the applicants: RBI is a predominantly local entity with broadcast experience; Adams is not. In comparison, the impact of Parker's interests on the diversification of media ownership "generally in the United States"[31] has little significance.

[31] Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d at 394 (indicating that distant interests are entitled to the least weight in the diversification analysis).

VI. SUMMARY

86. In view of the foregoing, we will reverse the initial decision, grant RBI's renewal application, and deny Adams' application for a construction permit. The record in this case does not support a conclusion that either Adams or RBI's Parker committed disqualifying misconduct. RBI's record in operating WTVE(TV) during the 1989-94 license term was minimal and RBI is not entitled to a renewal expectancy in the comparative evaluation of its application against Adams'. Nevertheless, RBI's local involvement and broadcast experience are entitled to the most weight in this case, giving it a clear advantage over Adams.

VII. PROCEDURAL MATTER

87. RBI complains that the ALJ exceeded his authority in ordering, in a Protective Order, RBI to reimburse Telemundo in the amount of $6,804 for expenses Telemundo incurred in responding to an RBI subpoena. Reading Broadcasting, Inc., FCC 00M-48 (Jul. 18, 2000). We agree. In ordering RBI to pay Telemundo's expenses, the ALJ relied on 47 C.F.R. § 1.313, which authorizes protective orders relating to discovery and provides that: "The [ALJ's] ruling . . . may specify any measures . . . to protect any party or deponent from annoyance, expense, embarrassment or oppression." The Commission, however, does not interpret this section as authorizing the reimbursement of expenses. The ALJ cited no other authority to support his order for RBI to pay Telemundo's expenses.[32] Without such authority, the order was improper, and we will vacate it.

VII. ORDERING CLAUSES

88. ACCORDINGLY, IT IS ORDERED, that the Protective Order of Administrative Law Judge Richard L. Sippel, FCC 00M-48 (Jul. 18, 2000) IS VACATED.

89. IT IS FURTHER ORDERED, That Reading Broadcasting, Inc.'s Exceptions to Initial Decision of Administrative Law Judge Richard Sippel, filed May 21, 2001 ARE GRANTED, and the Brief in Support of Initial Decision and Contingent Exceptions of Adams Communications Corporation, filed May 21, 2001, ARE DENIED.

90. IT IS FURTHER ORDERED, That the Initial Decision of Administrative law Judge Richard L. Sippel, FCC 01D-01 (ALJ Apr. 5, 2001) IS MODIFIED to the extent indicated above.

91. IT IS FURTHER ORDERED, That the application of Reading Broadcasting, Inc. for renewal of its license to operate Station WTVE(TV), Reading, Pennsylvania (FILE NO. BRCT-940407KF) IS GRANTED and the application of Adams Communications Corporation for a construction permit (File No. BPCT-940630KG) IS DENIED.

92. IT IS FURTHER ORDERED, That the Letter from Gene A. Bechtel and Harry Cole to Christopher Wright, General Counsel (Nov. 24, 1999) IS DISMISSED as moot.

[32] Compare Fed. R. Civ. Proc. Rule 45(c)(1), which authorizes District Courts to "impose upon the party or attorney [causing undue burden or expense] . . . an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorneys fee."

93. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Quantity (in minutes per quarter) of various types of non-entertainment programming presented on WTVE(TV) during the 1989-94 license term. Figures derived from RBI Exh. 8, App. A.

Quarter	Total WTVE-produced	Percent	Total Non-entertainment	Percent
3Q89	2150	1.64%	2887	2.20%
4Q89	1361	1.04%	3269.5	2.50%
3Q90	1013	0.77%	1144.5	0.87%
4Q90	611	0.47%	3039	2.32%
1Q91	1127.5	0.86%	1596.5	1.22%
2Q91	1049.5	0.80%	1126.35	0.86%
3Q91	1627	1.24%	2451	1.87%
4Q91	1978	1.51%	3742.3	2.86%
1Q92	2046	1.56%	2958.5	2.26%
2Q92	2239	1.71%	3208.5	2.45%
2Q92	1975	1.51%	3229	2.46%
4Q92	2901.25	2.21%	7171.75	5.47%
1Q93	3183	2.43%	4933.5	3.76%
2Q93	4889	3.73%	6739	5.14%
3Q93	4208	3.21%	5357	4.09%
4Q93	5185.5	3.96%	6497.5	4.96%
1Q94	6450	4.92%	9880.25	7.54%
2Q94	6761.5	5.16%	9893	7.55%
Avg.		2.15%		3.35%

Quarter	Total PSA (regardless of source)	Total Non-entertainment	Percent
3Q89	508	2887	17.60%
4Q89	846	3269.5	25.88%
3Q90	885	1144.5	77.33%
4Q90	1022	3039	33.63%
1Q91	1205	1596.5	75.48%
2Q91	1126.35	1126.35	100.00%
3Q91	2297.5	2451	93.74%
4Q91	2712.3	3742.3	72.48%
1Q92	2958.5	2958.5	100.00%
2Q92	2562	3208.5	79.85%
2Q92	2837.5	3229	87.88%
4Q92	2728	7171.75	38.04%
1Q93	2559	4933.5	51.87%
2Q93	3662	6739	54.34%
3Q93	2990.5	5357	55.82%
4Q93	3236.5	6497.5	49.81%
1Q94	3808	9880.25	38.54%
2Q94	3679.5	9893	37.19%
Avg.			60.53%

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